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Attorneys for MICKAIL MYLES, Plaintiff

**UNITED STATES DISTRICT COURT**  
**SOUTHERN DISTRICT OF CALIFORNIA**

1 MICKAIL MYLES, an individual,  
2 Plaintiff,

3 v.

4 COUNTY OF SAN DIEGO, by and  
5 through the SAN DIEGO COUNTY  
6 SHERIFF'S DEPARTMENT, a public  
entity; and DEPUTY J. BANKS,  
an individual,

7 Defendants.

Case No. 15-cv-1985-JAH (BLM)

**DECLARATION OF JOSEPH G.  
DICKS RE ADDITIONAL  
BRIEFING ON CLARIFICATION  
OF JUDGE HOUSTON'S MINUTE  
ORDER [192] GRANTING  
PLAINTIFF'S MOTION FOR  
SANCTIONS FOR DISCOVERY  
ABUSES AGAINST DEFENDANTS  
COUNTY OF SAN DIEGO AND  
JEREMY BANKS**

8 Date: July 5, 2022  
9 Time: 10:00 a.m.  
Judge: Hon. John A. Houston  
10 Crtrm: 13B

11 Complaint Filed: September 4, 2015

12 I, Joseph G. Dicks, declare:

13 1. I am a member in good standing with the California Bar and an  
14 attorney licensed to practice law before the Courts in the State of California, as  
15 well as the United States District Court for the Southern District of California. I  
16 am one of the attorneys of record for the Plaintiff, MICKAIL MYLES, in the  
17 herein case.

18 2. I have personal knowledge of the facts set forth herein, and if called  
19 upon to do so, I could and would competently testify thereto. This declaration is  
20 offered by Plaintiff in support of his Motion for Sanctions for Discovery Abuses.

21 3. Attached to the Notice of Lodgment filed herewith are true and  
22 correct copies of the exhibits described therein.

23 4. Since the service of Defendants' initial responses to Plaintiff's  
24 discovery requests which are the subject of this motion, I have had numerous  
25 meet and confer discussions with opposing counsel, most of which were with  
26 County Counsel, George Brewster. Several of these meetings were in person,  
27 over coffee. Many of these meetings were telephonic. Many were in email  
28 communications, and some in more formal correspondence. Many of these meet

1 and confer efforts were prior to the motion to compel, and many more were after  
2 the motion was decided. However, in nearly every one of these discussions,  
3 Defense counsel was reminded of the following:

- 4 a. Plaintiff was relying on the accuracy and honesty of the privilege  
5 log as the basis upon which a motion to compel would be brought  
6 given the fact that even the responses to the interrogatories  
7 (including supplemental responses) represented, under penalty of  
8 perjury, that any responsive documents would be identified on the  
9 privilege log. Exhibit WW, Defendants' recently served  
10 supplemental responses to interrogatories. Defense counsel agreed,  
11 on each occasion, that Plaintiff's reliance was justified;
- 12 b. The discovery propounded on Defendants requested documents,  
13 investigations, reports, files and correspondence concerning  
14 incidents occurring both prior to the Myles incident and after the  
15 Myles incident. This was not only acknowledged in the many meet  
16 and confer efforts with opposing counsel, but was acknowledged by  
17 the production of both pre and post Myles incident document  
18 productions by Defendants both before the motion to compel was  
19 ruled upon, and afterwards. In addition to the Magistrate's Order  
20 (Exhibit Q, Doc. 24) spelling out this fact, Mr. Brewster and I had a  
21 follow-up teleconference with the Magistrate on that very issue in  
22 early June of 2016, about a month after the Magistrate's Order  
23 (Doc. 24) was issued. In that call, the Magistrate made it clear that  
24 both documents concerning incidents both pre and post Myles'  
25 incident were ordered to be produced, resulting County Counsel  
26 George Brewster's email to me of June 6, 2016, wherein Mr.  
27 Brewster advised that the documents concerning the tasing/chocking  
28 of the juvenile (occurring post Myles' incident) and the Barragan

incident (occurring pre-Myles' incident) would be produced. (Exhibit TT.) I would note, again, that these incidents were identified and brought to the attention of defense counsel by Plaintiff's counsel, not the other way around. Defense counsel further acknowledged its obligation under the Magistrate's Order (Doc. 24) to produce documents concerning incidents post Myles' incident when Plaintiff again discovered yet another post Myles incident involving Banks and his K9 and brought it to Mr. Brewster's attention on July 22, 2016. (Exhibit UU.) The documents concerning that incident were produced on July 25, 2016. In yet another example, Defense counsel again further acknowledged its obligation under the Magistrate's Order (Doc. 24) to produce documents concerning incidents post Myles' incident when Mr. Brewster sent his August 24, 2016, email to me (Exhibit FF) volunteering that ". . . in doing a review of the files, *we did come across one other matter that falls within the discovery categories*, and I will be forwarding you that matter as soon as we are able to obtain an electronic copy and can do redactions . . . It was not investigated by IA, there were no complaints from the individuals involved, and I do not believe that CLERB was involved . . .". (Emphasis added.) Mr. Brewster went on to explain that Deputy Allison (who initiated the stop in both the Myles incident and the incident he was addressing in his email), Deputy Banks, and his K9 were involved, and that *the incident occurred after the Myles incident*.

5. A summary of the documents concerning post Myles incidents, involving Banks and Bubo include the following productions, most of which were independently identified by Plaintiff and brought to Defendants' attention:

	<u>BATES</u>	<u>DESCRIPTION</u>	<u>DATE PRODUCED</u>
1	1651	UOF Supp re 6/13/15 juvenile skateboarder	06/07/16
2	1653-1666	Officer Reports re 6/13/15 juvenile skateboarder	06/07/16
3	1671-1678	Officer Reports re 6/13/15 juvenile skateboarder	06/09/16
4	1989	UOF Supp re 09/27/15 Felipe Cortez	07/25/16
5	1989-2	UOF Supp re 09/27/15 Felipe Cortez	09/16/16
6	1990-1997	Arrest Report re 09/27/15 Felipe Cortez	07/25/16
7	1998-2001	Follow up Report re 09/27/15 Felipe Cortez	07/25/16
8	2002-2003	Officer Reports re 09/27/15 Felipe Cortez	07/25/16
9	K9-139-141	Banks' Canine Deployment Report of 9/13/14	04/26/16
10	K9-142-144	Stroh's Canine Deployment Report of 5/21/15	04/26/16
11	K9-145-147	Stroh's Canine Deployment Report of 6/24/15	04/26/16

12 See Exhibit PP.

13  
14 6. Moreover, Defendants, when they did finally produce some of the  
15 previously withheld documents after the filing of the sanctions motion, continued  
16 to apply abusive redactions to them based on objections previously overruled by  
17 Magistrate Major in her order, Doc. 24 and Exhibit Q. See, for instance, Exhibit  
18 AAA, recently produced Hartsell investigative files and, in particular, CSD-  
19 002818-002820, where the entire text of the report was redacted, contrary to the  
20 findings in Doc. 24 and Exhibit Q, at 20:4-8.

21 7. On November 30, 2016, when County Counsel George Brewster  
22 became less involved in the case (and eventually retired), he turned matters over  
23 to the Manning Firm and, in particular, Mildred ("Missy") O'Linn (see Exhibit  
24 GG), cooperation regarding the production of responsive documents all but  
25 ceased. Despite assurances in Exhibit GG that "Our outside counsel will address  
26 your requests for documents related to this matter" [referring to the Valdez IA  
27 investigation or lack thereof], no privilege log was ever served identifying any  
28 withheld responsive documents like what was done with the pre- and post-

1 Myles' IA investigatory files identified in prior privilege logs. Further, no IA  
 2 files were ever produced, despite repeated requests. (*See Exhibit BBB*, recent  
 3 email exchange with Ron Lenert regarding the production of these records.)  
 4 Instead of responding to these inquiries, after I clarified exactly what Plaintiff  
 5 was looking for, Defendants completely ignored the request.

6 8. The importance of these Valdez IA files, or absence thereof, is  
 7 probative to the *Monell*, Bane Act, ratification, training, supervision and  
 8 motive/intent issues raised in Plaintiff's pleadings. If they exist, Plaintiff should  
 9 have had them years ago so his expert could analyze and opine on their content  
 10 or lack of content. If they do not exist, as represented in *Exhibit GG*, that fact  
 11 alone adds to the already identified numerous failures by the County to address  
 12 allegations of officer misconduct.

13 9. At the July 5, 2022, hearing before this Court, Your Honor inquired  
 14 as to the standard for accepting even verbal complaints to IA investigators about  
 15 alleged officer misconduct during the period concerning the several Valdez  
 16 complaints (2013-2016). *Exhibits LLL*, *MMM*, and *NNN*, provided by  
 17 Plaintiff's police procedures expert, Jeffrey Noble, answers that inquiry. The  
 18 Department of Justice, relying on Mr. Noble's textbook, makes it clear that the  
 19 investigation of verbal complaints, even anonymous ones, was the standard, at  
 20 least since 2009.

21 10. As for the recent production of approximately 1,000 pages of  
 22 documents by the Defense, Plaintiff's counsel and Mr. Noble have attempted to  
 23 analyze many of them and make sense of them in light of the prior productions.  
 24 As set forth in the Noble declaration, they evidence a still growing and consistent  
 25 pattern of failing to document key encounters, uses of force (including K9), K9-  
 26 related injuries to both members of the public and sheriff deputies, and lack of  
 27 training, lack of K9 deployment documentation, and confusion regarding which  
 28 K9 was involved in which encounters.

1           11. Plaintiff's document requests 7, 46a and 46b, combined with  
 2 interrogatories 8 and 9 (Exhibits CC and DD) imposed reasonable, clear,  
 3 unambiguous discovery obligations on Defendants. Any arguments during the  
 4 discovery process regarding what needed to be produced in response to these  
 5 discovery requests were resolved in Plaintiff's favor, not only by the discovery  
 6 order of May 4, 2016, Doc. 24, but in the follow-up teleconference with  
 7 Magistrate Major in early June, 2016 as set forth in Exhibit TT, George  
 8 Brewster's email to me of June 6, 2016.

9           12. Defendants have clearly willfully withheld evidence in discovery  
 10 probative on the issues of *Monell* liability, Bane Act liability, ratification, failure  
 11 to train and supervise, motive, intent, lack of mistake, as well as negligence. That  
 12 willful failure itself is part of the County's pattern and practice of denying  
 13 Plaintiff his civil rights under §1983, as well as proof of the Defendants'  
 14 "consciousness of guilt."

15           13. Defendants' willful failure to produce documents and supplement  
 16 its interrogatory responses is probative of their attempts to cover-up and conceal  
 17 their wrongdoing. The Court may remember the blatant falsehoods set forth by  
 18 the County's high-ranking law enforcement personnel exposed in their  
 19 depositions as set forth in Exhibit M that were employed as a tactic to attempt to  
 20 mislead the Magistrate when deciding on the all-important motion to compel. For  
 21 instance, then Captain Anthony Ray, who has since been appointed as the  
 22 Interim Sheriff after William Gore resigned, falsely declared, under penalty of  
 23 perjury in opposition to Plaintiff's motion to compel the production of police  
 24 records, that he had personally "read and reviewed documents in this log,  
 25 identified as CSD000430 through CSD001623." He thereafter admitted during  
 26 my deposition of him that he had only "flipped through" less than 100 pages of  
 27 documents. Exhibit M at Bates pp. 72-75. Had that deceptive tactic succeeded,  
 28 Plaintiff would have been denied any fair opportunity to prove most, if not all of



1 his claims, and Plaintiff would have been blocked from accessing any of the  
2 relevant records in the Defendants' possession. This is not a matter of simply  
3 opposing a motion to compel based upon a good faith, honest opposition. The  
4 jury cannot be shielded from the deceptive tactics of these senior officers, and  
5 others, in abusing the discovery process, as these acts, which continue even to  
6 this date, go to the core of Plaintiff's claims and causes of action.

7 14. Plaintiff wants to emphasize that he has waited over seven years to  
8 have his opportunity to seek justice from a jury of his peers, and in no manner of  
9 speaking wants any further delay of these proceedings, as a continuance will  
10 only assist the Defendants and provide them the delay they sought in their  
11 Motion in Limine No. 11. Instead, Plaintiff seeks sanctions commensurate with  
12 the damage that has been done to his case by the willful failures and discovery  
13 abuses perpetuated by the Defendants.

14 I declare under penalty of perjury under the laws of the State of California  
15 and the United States that the foregoing is true and correct. Executed this 14<sup>th</sup>  
16 day of July 2022, at San Diego, California.

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18 /s/ Joseph G. Dicks  
19 Joseph G. Dicks  
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